

Commentary

Emerging Concepts of Regulation

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There are several concepts emerging in the field of environmental regulation that need discussion and clarification. First, in the private sector, my organization has been pressing for competition between agencies in the public sector as a key strategy to check the integrity of the environmental police force.

Second, in the public sector, Marvin Schneiderman, Marcus Key and others in HEW have sold many of us on the broad concept of socially acceptable risk in environmental regulation. Third, among professional groups, there is the perennial soul-searching about the role in regulation of the scientist in the employ of industry, the universities, and government. (Essentially the existence or nonexistence of Brodeur's industrial-medical complex)

Let me take the last concept first because it provides the setting for the rest of what I have to say.

Yesterday Dr. Eckhardt was honest. He put the presence of an industrial-medical complex in its best light. His explication of its ideology was lucid: a clear endorsement of the corporate scientist as an advocate for the marketplace of commerce in the marketplace of ideas, shifting the burden of the environmental problem from the control of toxic substances to changing the habits of the general population. Whether this ideology will prevail is a key question in the years ahead. I gather from the disturbed and loud silence his presentation evoked—as well as comments after the session—

that even among corporate scientists the issue is not settled, that this ideology is not personally acceptable to every honest corporate scientist.

I don't take issue with scientists as advocates. All of us are advocates but hopefully not as sophists. Science should be and must be involved in the real world. We should even expect studies overtly designed to prove a preconceived position, even essentially an economic position; so long as the product of these studies is accurately and adequately labeled, we should have no compunctions about this kind of science. Interpretation of data is a manifestation of the same teleologic dialectic (a term which I use in the Platonic rather than the Marxist sense).

What of the government scientist? Whether government science is regulatory, service, or experimental in nature—depending on the mandates of the agency—the agency scientist will reflect heuristically the intellectual and political climate of the agency. The government scientist is essentially reactive.

For example, the June 20, 1974 draft of EPA's VC task force reflects the unabashed views of the controlling segment of corporate science. It says that requiring an ambient standard lower than 50 ppm does not appear to be justified. The contradictory evidence and views—even those of other federal agencies—are not discussed. Based on EPA's own data, 50 ppm is seldom, if ever, reached in the community. Therefore this view (which did not persist) in the agency mandates no control whatsoever and even encourages vinyl chloride contamination above existing levels.

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Our enthusiasm for the pending Toxic Substances Act has always been tempered by the bill's emphasis on EPA at the sacrifice of competing agencies. The document presents the clearest evidence of why the policeman must not determine the law he enforces, the procedures under which the enforcement takes place, or the definition of the problem. It illustrates why we have insisted that not even all the police powers reside in one regulatory agency. Competition between state agencies, OSHA, AEC, FTC, EPA, and FDA is healthy. Neat organizational charts seldom reflect good government.

Competition—I want to emphasize—should exist not only between agencies with the same or overlapping function, but also when functions are ostensibly separate. Research and service agencies do compete with regulatory agencies. This competition is the very essence of the system of checks and balances which must be preserved in our society. Only in this context can the concept of socially acceptable risk find any kind of meaningful implementation. Because of the shortage of time, I cannot try to begin a serious discussion of this concept. But I will say that only the perverse or the exceptionally naive and ignorant think the discourse would simply be one of subjectively accepting a given percentage of death and disease at a given so-called feasible limit of exposure. The concept demands a re-examination of the notion of a moral calculus.

Human lives are at risk for every product. Obviously the social value of the uses of a toxic substance must be considered in the calculus.

Other expressions in the calculus might include: other environmental effects, substituta-

bility of the product, raw material, or process; externalized social costs; desires of the population at risk; genetic and other long-term effects on the exposed population; limitation of exposure by mandated administrative controls such as rotation; feasibility of potential technology; future raw material needs; and economic and social development.

Let me close with a word or so on economic and social development. Economics is a new science which has much to learn from biology.

Remember the historic dialectic on biological change (development in evolution, embryologically, and even in physiologic adaptation): epigenesis vs. preformation. From Aristotle to Paul Weiss, the question was whether growth, for example, proceeded essentially by increase in volume or increase in volume plus differentiation (internalized development). The epigeneticists—the Aristotelians—seem to have won. There has been a rejection of Galen's notion, namely that growth (to use Galen's example) equals the blowing up of a pig's bladder.

Yet the current, simplistic views of "economic" growth are reflected in the pre-occupation with Gross National Product and similar indices of volume.

The economist—all of us—must learn that economic development is not the blowing up of a pig's bladder. Without internalization there cannot be that kind of change in the quality of human life identified with satisfactory social development. The concept of social acceptability must encompass an epigenetic view of human development and must take into account a data base yet to be generated.